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Meeting of States Parties
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Draft proposal relating to the staff assessment fund of the International Tribunal for the Law of the Sea

Working paper prepared by the Tribunal

I. Introduction

1. According to article 18, paragraph 8, of the Statute of the Tribunal and article 11, paragraph 1, of the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, the salaries, emoluments and allowances paid to members and officials of the Tribunal are free of all taxation.

2. However, certain States do not exempt their citizens and residents from tax liability on earnings from international organizations, including the Tribunal.

3. In order to address the issue of national taxes on emoluments from the Tribunal, the Tribunal has maintained a Staff Assessment Account since 1996. Staff assessment deducted from salaries of officials of the Tribunal is placed in the Staff Assessment Account. Payments by staff members to the account are made monthly. As of 31 December 2002, the staff assessment fund amounted to a total net credit of US$ 2,299,070. A provision has been made to cover the tax liability of the Tribunal in respect of 2002 in the amount of $35,000.

4. A mechanism proposed to the twelfth Meeting of States Parties for dealing with the staff assessment issue was to create a fund which would utilize the balance currently held and also earn interest. The purpose of the fund would be to reimburse officials and members of the Tribunal for taxes paid in respect of their emoluments. The twelfth Meeting of States Parties, having considered the proposal prepared by the Tribunal on the creation of a staff assessment fund (SPLOS/WP.19), decided that the International Tribunal for the Law of the Sea "should continue with its current practice with regard to staff assessment pending the adoption of a decision by the Meeting of States Parties on the basis of a detailed proposal to be submitted by the Tribunal to the thirteenth Meeting of States Parties" (SPLOS/88).

5. The present document contains two proposals for dealing with the issue of national tax on emoluments from the Tribunal: (a) that a tax reimbursement fund be

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set up, or, alternatively (b) that the reimbursement of national tax be charged to the budget.

II. Tax reimbursement fund

A. Mechanism

6. It is proposed that a tax reimbursement fund be created with the amount of staff assessment already placed in the Staff Assessment Account as at 31 December 2002. Interest generated by the fund would be used to reimburse staff and members for national taxes paid on emoluments from the Tribunal.

7. In order to cover possible increases in expenditure, the amount of interest not utilized in a given year would be added to the principal. However, depending on the level of expenditure incurred, this would not exclude the possibility of the Tribunal seeking further contributions from the States Parties from time to time.

B. Level of the fund

8. In order to meet expenditure incurred for reimbursement of national taxes to members and officials, an estimate of $35,000 per year could be considered reasonable.

9. Based on the assumption of an average interest rate of 1.1 per cent (for short-term investments in the current economic climate), a fund amounting to $2,299,070 could generate the income to meet this expenditure.

Year	*2003*	*2004*	*2005*	*2006*	*2007*
Available balance as at 1 January 2003 (US$)	2 299 070	2 289 360	2 279 018	2 268 029	2 256 379
Estimated interest receivable (1.1%)	25 290	25 183	25 069	24 948	24 820
Estimated expenditure[a]	35 000	35 525	36 058	36 598	37 148
Estimated capital carried forward	2 289 360	2 279 018	2 268 029	2 256 379	2 244 051

[a] Annual inflation adjustment: 1.5%.

C. Consequences

10. If this proposal were to be adopted, there would be a decrease in the Tribunal's budget of approximately $500,000 for 2004, since the budget would be calculated on the basis of the net instead of the gross salaries of staff members of the Tribunal.

11. The Registrar would be requested to transmit to the Meeting of States Parties periodic reports on the use of the fund.

III. Charging to common costs or establishing new budget lines

A. Mechanism

12. From 1996 to 31 December 2001, the Tribunal paid to staff members concerned a total of $43,649 for the purpose of reimbursing national tax levied on their emoluments from the Tribunal. An amount of $15,154 was paid in 2002 in respect of tax year 2001. No reimbursement has so far been requested by members of the Tribunal in respect of national tax levied on their remuneration from the Tribunal, although there are indications that the situation will change in the near future.

13. In the light of the relatively small amount reimbursed so far, another solution could be for the expected amount of tax payments by staff members to be charged to the budget line "Common staff costs", or for a separate budget line to be created for this purpose under section 2, "Staff costs".

14. Similarly, the amount expected to be reimbursed for national tax on the emoluments of members from the Tribunal could be added to common costs, which are currently included in the budget line "Annual allowances" under section 1, "Judges", or a separate budget line could be established for this purpose under section 1, "Judges".

B. Consequences

15. If this approach were to be adopted, the total amount remaining in the Staff Assessment Account as of 31 December 2002 ($2,299,070) would be surrendered to States Parties in 2004.

16. There would be no further need to collect staff assessment. This would result in a decrease in the Tribunal's budget for 2004 of approximately $465,000, since the budget would be calculated on the basis of the net instead of the gross salaries of the staff members of the Tribunal.

IV. Proposal

17. The Meeting of States Parties may wish to consider the two options detailed above and decide which is the most suitable.